

REMARKS/ARGUMENTS

Claims 1-31 remain pending. No claims have been added, amended, or cancelled. Reexamination and reconsideration of the pending claims, in light of the remarks and information disclosure statement provided herewith, are respectfully requested.

INFORMATION DISCLOSURE STATEMENT

Applicants are filing herewith an Information Disclosure Statement with a copy of US Provisional Application No. 60/431,622 (hereinafter "the '622 Liang application"), the parent provisional application from which the subject application claims priority. Additionally, for the Examiner's convenience, applicants are including copies of all of the parent non-provisional and provisional applications from which patent publication No. US 2005/0270491, in the name of Dai et al. (hereinafter "the 'Dai et al. publication") claims priority. Applicants note that the 'Dai et al. publication is co-assigned with the subject application, and was filed on May 19, 2005 (after the filing date of the subject application on December 2, 2003).

CLAIM REJECTIONS UNDER 35 U.S.C. §102E

Claims 1-12, 15, and 17-31 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by the 'Dai et al. publication. Applicants note that the subject application was filed on December 2, 2003, and claims priority from a provisional application filed on December 6, 2002. The 'Dai et al. publication was filed on May 19, 2005 (about a half year after the filing date of the subject application). Moreover, while 'Dai claims priority from a variety of regular and provisional US filings, all were filed after the filing date of the '622 Liang application, the parent provisional from which the subject application claims priority. Hence, Applicants respectfully submit that the Office Action of December 2, 2003 fails to establish that the 'Dai et al. publication is prior art under §102(e).

CLAIMS REJECTIONS UNDER 35 U.S.C. §103

Claims 13, 14, and 16 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the 'Dai et al. publication. Such a rejection is traversed as follows:

The Dai et al. publication and the subject application are co-assigned to VISX, Incorporated, of Santa Clara, California. Per MPEP §706.02(k), subject matter which would be prior art under §103 through §102(e) can be overcome by filing a terminal disclaimer. It has not been established that the presently claimed invention is subject even to this requirement, as the availability of the Dai et al. publication as prior art against the currently pending claims has not been established. Hence, filing of a terminal disclaimer appears premature, and Applicants will await the Examiner's analysis and review any provisional obviousness-type double patenting rejection before considering whether a terminal disclaimer is appropriate. Regardless, the current rejections of the claims do not appear well founded, so that applicants respectfully request that they be removed and that the claims be allowed.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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